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Supreme Court of the United States.

Nos. 337 and 338.—October Term, 1903.

Jackson W. Giles, Plaintiff in Error,
No. 337. *vs.*
Charles B. Teasley et al., Board of Registrars of Montgomery County, Alabama.

Jackson W. Giles, Plaintiff in Error,
No. 338. *vs.*
Charles B. Teasley et al., Board of Registrars of Montgomery County, Alabama.

} In error to the Supreme Court of the State of Alabama.

[February 23, 1904]

These cases are writs of error to the Supreme Court of the State of Alabama.

In No. 337, the action was brought to recover damages in the sum of $5,000 against the board of registrars of Montgomery County, Alabama, for refusing to register the plaintiff as a qualified elector of the State. The substance of the complaint is: The plaintiff is a native of the State of Alabama, a resident of Montgomery County for thirty years, and of the voting precinct for more than two years. He applied for registration, having theretofore enjoyed the right of voting in the State; the application was made to the board of registrars on March 13, 1902; the plaintiff complied with all reasonable requirements of the board, but was arbitrarily refused the right of registration for no other reason than his race and color. At the same time a large number of negroes similarly situated were likewise refused, while all the white men were registered and given certificates, without denial, nor was any question raised as to their qualifications. The registrars required the plaintiff and all members of his race to furnish the testimony of two white men as to their qualifications and refused to accept the testimony of colored persons, while all the white men were registered without any proof except the oath of the applicant. It is alleged that sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of the constitution of the State of Alabama, which went into effect November 28, 1901, under authority of which the registrars were acting, was intended, designed and enacted by the constitutional convention to deny and abridge the right of the plaintiff and others of his race in the State to vote, solely on account of race, color and previous condition of servitude. The convention of the State of Alabama was composed entirely of white men, although the population of the State is composed of 1,001,152 white and

827,545 colored persons. It is alleged that article 180 of said constitution is repugnant to the Fourteenth and Fifteenth Amendments to the Constitution of the United States because subdivisions one and two of said section do not contain a statement of qualifications applicable to all, regardless of race, color and previous condition of servitude, but discriminate against negroes solely on account of race. Subdivision three is unreasonable and void, *in not defining what character a good citizen must have* and what obligations he must understand under a republican form of government, and gives to the registrars a wide discretion and authority and invests them with arbitrary power. That section 181 of article 8 is repugnant to the said amendments to the Constitution of the United States in that, while it pretends to describe the qualifications of persons who shall apply for registration after January 1, 1903, it was in truth and in effect enacted to apply to the plaintiff and all negroes of the State, and not to operate against and affect any white persons in the State, and is a part of a scheme to disfranchise the negroes of Alabama on account of race, color and previous condition of servitude. By refusing to permit the negroes to register the board of registrars is forcing them to wait until January 1, 1903, when section 181 comes into effect. It is charged that said board is composed exclusively of white men, and the right of appeal given from the action of said board to the Circuit Court and thence to the Supreme Court of the State was given to more effectually hinder the plaintiff and others of his race in their right to vote and not to accomplish their registration. The negroes are excluded from serving on juries in the trial courts of the State and have been for many years, although qualified for the service, on account of race, color and previous condition of servitude. That on appeal the plaintiff would encounter the same prejudice and obtain the same result as before the board of registrars. The defendants, well knowing the object of the constitutional provisions, were appointed by the State to administer the same, and while so engaged did wilfully and wrongfully refuse to register the plaintiff and others of his race for no other reason than their race and color, and thus deprived them of the right to vote as electors of the State, contrary to the provisions of the first section of the Fifteenth Amendment to the Constitution of the United States.

In No. 338, the petition for mandamus contains like allegations as to the right of the petitioner to be registered as a voter in the State of Alabama, and avers that he is a person of good character and understands the duties of citizenship under a republican form of government. The petitioner avers, as in his petition for damages, his application to be registered March 13, 1902, which was arbitrarily refused for the reasons set forth in the petition for damages, contrary to the right of the petitioner. He repeats the allegations as to the registration of white persons, and avers that the denial of registration to him and others of his race was a denial by the State of

Alabama of the equal protection of the laws and the denial of his right to vote solely on account of his race, color and previous condition of servitude, and was in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States. Allegations are inserted as to the intent and purpose of the State in calling the constitutional convention and the adoption of the constitution September 3, 1901. It is alleged that the sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8 of said new constitution were enacted with the intent and for the purpose set forth in the petition for damages. Allegations are set forth as to the exclusion of the negroes from representation, notwithstanding the part they compose of the population of the State. It is claimed that section 180 of article 8 is obnoxious and repugnant to the Fourteenth and Fifteenth Amendments to the Constitution of the United States, in that it divides the inhabitants into three classes, viz: 1, soldiers' class; 2, descendants of soldiers' class; 3, a class not soldiers nor their descendants. That the class not soldiers or their descendants are under greater restrictions and given greater burdens than the other classes. That section three is void and unreasonable, failing to define what duties and obligations a citizen must understand under a republican form of government, and gives too wide a discretion to the registrars, amounting to vesting them with arbitrary power. Subdivisions 1 and 2 do not contain a statement of qualifications which are applicable to all alike, but discriminate against the negroes of the State on account of race, color and previous condition of servitude. The petition in mandamus contains substantially the allegations of the petition for damages as to the manner in which the constitution was adopted, and avers that section 181, describing the qualifications of persons who apply for registration after January 1, 1903, was designed and intended to apply to petitioner and others of his race and not intended to operate against and affect white persons in the State of Alabama. It is charged that in the counties of Alabama colored persons are refused registration, while, under the same circumstances and possessing the same qualifications, white men are registered without objection, thereby compelling colored men to wait until January 1, 1903, when the provisions of section 181 will be in operation, and compelling the colored men to have greater and different qualifications than are imposed upon the white men in the State, all of which, it is charged, was in pursuance of a design to evade the terms of the Fourteenth and Fifteenth Amendments to the Constitution of the United States, and to deny to the plaintiff and others of his race the equal protection of the laws, and to deprive them of the right to vote solely on account of their race, color and previous condition of servitude. Petitioner repeats the allegations of the former petition for damages as to the composition of the board of registrars, and the remedy of appeal from their action to the courts of the State, and claims that if such appeal was prosecuted it could not be heard and deter-

mined before the election, but the hearing of the cases would take many years. There are attached to the petition as exhibits extracts from the speeches and debates in the convention of Alabama. The petition charges that the board of registrars refused to register colored men, so that not less than 75,000 of such persons were denied registration solely on account of race, color and previous condition of servitude, although possessing the necessary qualifications of electors, while the white men were permitted to register without let or hindrance. Affidavits were filed with the petition setting forth the denial of the right of colored persons in various counties in the State of Alabama. The prayer of the petition is that the aforesaid sections of the State constitution be declared absolutely null and void as repugnant to the Fourteenth and Fifteenth Amendments to the Constitution of the United States, and for a writ of mandamus commanding the board of registrars to register the plaintiff as a qualified voter of the State of Alabama, and to issue to him a certificate of the fact, and the like to all voters of his race in the State of Alabama who were such under the constitution of the State prior to the adoption of sections 180, 181, 183, 184, 185, 186, 187 and 188 of the new constitution of the State. And that said board be further commanded not to refuse to register said petitioner or other members of his race on account of their race or color and previous condition of servitude.

To the petitions in both cases demurrers were filed in the court of original jurisdiction, which were sustained, and upon appellate proceedings in the Supreme Court of the State of Alabama the decisions of the lower court were affirmed. These writs of error seek to bring this action of the State courts in review here.

Mr. Justice DAY, after making the foregoing statement, delivered the opinion of the Court.

The right to review in this court the judgment of a State court is regulated by section 709 of the Revised Statutes. The extent and nature of the remedy therein given has been the subject of numerous decisions. The jurisdiction in the cases now under consideration is invoked because of alleged denial of the rights of the plaintiff in error, secured to him by the Fourteenth and Fifteenth Amendments to the Constitution of the United States. When the jurisdiction depends, as in the present cases, upon a right, privilege or immunity under the Constitution of the United States specially set up and denied in the State court, certain propositions, it is said by Mr. Chief Justice Fuller, speaking for the court in *Sayward* v. *Denny*, (158 U. S. 180–183,) are well settled, among others, "The right on which the party relies must have been called to the attention of the court in some proper way and the decision of the court must have been against the right, (*Hoyt* v.

Sheldon, 1 Black, 518; *Maxwell* v. *Newhold*, 18 How. 511, 515;) or, at all events, it must appear from the record, by clear and necessary intendment, that the Federal question was directly invoked so that the State court could not have given judgment without deciding it." It is equally well settled that if the decision of a State court rests on an independent ground—one which does not necessarily include a determination of the Federal right claimed—or upon a ground broad enough to sustain it without deciding the Federal question raised, this court has no jurisdiction to review the judgment of the State court. (*New Orleans* v. *New Orleans Waterworks Co.*, 142 U. S. 49; *Eustis* v. *Bolles*, 150 U. S. 361; *Dower* v. *Richards*, 151 U. S. 658–666; *Wade* v. *Lawder*, 165 U. S. 624–628.)

In every case which comes to this court on writ of error or appeal the question of jurisdiction must be first answered, whether propounded by counsel or not. (*Defiance Waterworks Company* v. *Defiance*, decided at this term, 191 U. S. 184.) In No. 337, in which an action was begun against the registrars for damages, the case was decided upon demurrer to the declaration. The Supreme Court of Alabama placed its decision affirming the lower court, which sustained the demurrer, upon two grounds, as follows:

"If we accept (without deciding) as correct the insistence laid in appellant's brief that section 186 of article VIII of the constitution of 1901 is void because repugnant to the Fourteenth and Fifteeth Amendments of the Constitution of the United States, then the defendants were wholly without authority to register the plaintiff as a voter, and their refusal to do so cannot be made the predicate for a recovery of damages against them.

"On the other hand, if that section is the source of their authority, the jurisdiction is expressly conferred by it upon the defendants as a board of registrars to determine the qualifications of plaintiff as an elector and of his right to be registered as a voter. For their judicial act of refusing to register him predicated upon that determination, they are not liable in this action. (17 Am. & Eng. Ency. Law (2d ed.) pp. 727, 728, and notes.)—Affirmed." (136 Ala. 164.)

A consideration of the plaintiff's petition shows that it attacked the provisions of the Alabama constitution regulating the qualifications and registration of the electors of the State as an attempt to disregard the provisions of the Fourteenth and Fifteenth Amendments to the Constitution of the United States, by qualifying the whites to exercise the elective franchise and denying the same rights to the negroes of the State. It is alleged that sections 180, 181, 182, 184, 185, 186, 187 and 188 of the Alabama constitution, which took effect on November 28, 1901, and under which the defendants were appointed registrars, and were acting at the time, were enacted by the State of Alabama, through its delegates to the constitutional convention, to deny and abridge the right of the plaintiff and others of his race to vote in the State on account of their color and previous condition of servitude, without disfranchising a single white man in the State.

These sections of the Alabama constitution were before this court in the case of *Giles* v. *Harris*, (189 U. S. 475,) and the general plan of voting and registration was summarized by Mr. Justice Holmes, delivering the opinion of the court as follows:

"By section 178 of article 8, to entitle a person to vote he must have resided in the State at least two years, in the county one year and in the precinct or ward three months, immediately preceding the election; have paid his poll tax, and have been duly registered as an elector. By section 182, idiots, insane persons and those convicted of certain crimes are disqualified. Subject to the foregoing, by section 180, before 1903 the following male citizens of the State, who are citizens of the United States, were entitle to register, viz: First. All who had served honorably in the enumerated wars of the United States, including those on either side of the 'war between the States.' Second. All lawful descendants of persons who served honorably in the enumerated wars or in the war of the Revolution. Third. 'All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government.' By section 181 after January 1, 1903, only the following persons are entitled to register: First. Those who can read and write any article of the Constitution of the United States in the English language, and who either are physically unable to work or have been regularly engaged in some lawful business for the greater part of the last twelve months, and those who are unable to read and write solely because physically disabled. Second. Owners or husbands of owners of forty acres of land in the State, upon which they reside, and owners or husbands of owners of real or personal estate in the State assessed for taxation at three hundred dollars or more, if the taxes have been paid, unless under contest. By section 183, only persons qualified as electors can take part in any method of party action. By section 184, persons not registered are disqualified from voting. By section 185, an elector whose vote is challenged shall be required to swear that the matter of the challenge is untrue before his vote shall be received. By section 186, the legislature is to provide for registration after January 1, 1903, the qualifications and oath of the registrars are prescribed, the duties of the registrars before that date are laid down, and an appeal is given to the county court and Supreme Court if registration is denied. There are further executive details in section 187, together with the above-mentioned continuance of the effect of registration before January 1, 1903. By section 188, after the last-mentioned date applicants for registration may be examined under oath as to where they have lived for the last five years, the names by which they have been known, and the names of their employers."

It is apparent that paragraph 3 of section 180, permitting the registration of electors before 1903, of "all persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government," opened a wide door to the exercise of discretionary power by the registrars. It is charged that this section, in connection with section 181, permitting the registration of certain persons after January, 1903, was intended to be so carried into operation and effect that the negroes of Alabama should be excluded from the elective fran-

chise, and to permit the white men to register before January 1, 1903, and thus become electors, compelling the colored men to wait until after January 1, 1903, and then to apply under conditions which were especially framed and would have the effect to exclude the colored man from voting. It is charged that the registrars well knew the scheme and purpose set forth in the complaint to work the disfranchisement of negro voters and to qualify the white voters to exercise the elective franchise, and it is charged that the defendants were appointed by the State under sections of the State constitution adopted for the purpose of denying the colored man the right to vote and under which the defendants are undertaking to carry out the scheme and were so acting when they denied the right of the plaintiff to register, thus depriving him of the right guaranteed to him by the first section of the Fifteenth Amendment to the Constitution of the United States. A consideration of the allegations of this complaint, to which the demurrer was sustained, makes apparent that the Federal right for which the plaintiff sought protection and the recovery of damages was that secured by the amendment to the Federal Constitution, which prohibits a State from denying to the citizen the right of suffrage because of race, color or previous condition of servitude. But in the present case the State court has not sustained the right of the State to thus abridge the constitutional rights of the plaintiff. It has planted its decision upon a ground independent of the alleged State action seeking to nullify the force and effect of the constitutional amendments protecting the right of suffrage. The first ground of sustaining the demurrer is, in effect, that, conceding the allegations of the petition to be true, and the registrars to have been appointed and qualified under a constitution which has for its purpose to prevent negroes from voting and to exclude them from registration for that purpose, no damage has been suffered by the plaintiff, because no refusal to register by a board thus constituted in defiance of the Federal Constitution could have the effect to disqualify a legal voter, otherwise entitled to exercise the elective franchise. In such a decision no right, immunity or privilege, the creation of Federal authority, has been set up by the plaintiff in error and denied in such wise as to give this court the right to review the State court decision. This view renders it unnecessary to consider whether, where a proper case was made for the denial of the right of suffrage, it would be a defense for the election officers to say that they were acting in a judicial capacity where the denial of the right was solely because of the race, color or previous condition of servitude of the plaintiff. In the ground first stated we are of opinion that the State court decided the case for reasons independent of the Federal right claimed, and hence its action is not reviewable here.

In the case for a writ of mandamus the same attack was made upon the action of the State of Alabama in adopting and enforcing the provisions of the State constitution which it was charged were adopted for the purpose of

disfranchising the negroes and permitting white men only to exercise the elective franchise. In the mandamus case the decision of the State court was:

"The petition in this case is for a writ of mandamus to compel the board of registrars for Montgomery County to register the petitioner as an elector. It alleges that sections 180, 181, 183, 184, 185, 186, 187 and 188 of art. VIII of the constitution of 1901, fixing the qualification of electors and prescribing the mode of registration, are unconstitutional because violative of the Fourteenth and Fifteenth Amendments of the Constitution of the United States. The prayer is in substance that these sections of the constitution above enumerated be declared null and void and that an alternative writ of mandamus issue to the board of registrars commanding them to register as a qualified elector of the State of Alabama, upon the books provided therefor, the name of petitioner and to issue to him a certificate of the fact in disregard of said sections of the constitution, &c.

"As these sections of the constitution assailed created the board of registrars, fixed their tenure of office, defined and prescribed their duties, if they are stricken down on account of being unconstitutional, it is entirely clear that the board would have no existence and no duties to perform. So then taking the case as made by the petition, without deciding the constitutional question attempted to be raised or intimating anything as to the correctness of the contention on that question, there would be no board to perform the duty sought to be compelled by the writ and no duty imposed of which the petitioner can avail himself in this preceeding, to say nothing of his right to be registered.—Affirmed." (136 Ala. 228.)

We do not perceive how this decision involved the adjudication of a right claimed under the Federal Constitution against the appellant. It denies the relief by way of mandamus, admitting the allegations of the petition as to the illegal character of the registration authorized in pursuance of the Alabama constitution.

This is a ground adequate to sustain the decision and wholly independent of the rights set up by the plaintiff as secured to him by the the constitutional amendments for his protection.

The plaintiff in error relies upon two cases adjudicated in this court, *Wiley* v. *Sinkler*, (179 U. S. 58,) and *Swafford* v. *Templeton*, (185 U. S. 487.) In the former it was held that an action may be sustained in a court of the United States against election officers for refusing the plaintiff's vote for member of Congress. The allegations of the complaint are set forth in full in the statement of the case, and it appears that the board of managers were averred to be legally qualified to preside at the Federal election, and as such wrongfully refused the proffered vote of the plaintiff, a duly qualified elector, willfully and without legal excuse. It was held that the complaint was defective for not averring that the plaintiff was a duly registered voter. It appeared that the registration law had not been held unconstitutional, and it further appeared that if such was the fact

plaintiff was not in a position to impugn its constitutionality. In *Swafford* v. *Templeton*, it was held that the Circuit Court erred in dismissing for want of jurisdiction an action kindred to that sustained in *Wiley* v. *Sinkler*, wherein the plaintiff was denied the right to vote for member of Congress, which was held to have its foundation in the Constitution of the United States, with consequent jurisdiction in a Federal court to redress a wrongful denial of the right. Neither of these cases are in point in determining our right to review the action of the State court in the case now before us. It is apparent that the thing complained of, so far as it involves rights secured under the Federal Constitution, is the action of the State of Alabama in the adoption and enforcing of a constitution with the purpose of excluding from the exercise of the right of suffrage the negro voters of the State, in violation of the Fifteenth Amendment to the Constitution of the United States. The great difficulty of reaching the political action of a State through remedies afforded in the courts, State or Federal, was suggested by this court in *Giles* v. *Harris*, *supra*.

In reaching the conclusion that the present writs of error must be dismissed the court is not unmindful of the gravity of the statements of the complainant charging violation of a constitutional amendment which is a part of the supreme law of the land; but the right of this court to review the decisions of the highest court of a State has long been well settled, and is circumscribed by the rules established by law. We are of opinion that plaintiffs in error have not brought the cases within the statute giving to this court the right of review.

The writs of error in both cases will be dismissed.

Mr. Justice McKenna concurs in the result.

Mr. Justice Harlan dissents.

True copy.

Test:

Clerk Supreme Court, U. S.